

PUBLIC EMPLOYMENT RELATIONS BOARD

FOR THE STATE OF DELAWARE

WILMINGTON FRATERNAL ORDER OF POLICE,)	
LODGE NO. 1,)	
)	<u>ULP No. 03-10-408</u>
Petitioner,)	
)	Probable Cause Determination
CITY OF WILMINGTON,)	
)	
Respondent,)	

BACKGROUND

The City of Wilmington, Delaware (“City”) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986).

Fraternal Order of Police Lodge No. 1 (“FOP Lodge 1”) is an employee organization which admits to membership police officers employed by the City of Wilmington and which has as a purpose the representation of such employees in collective bargaining, pursuant to 19 Del.C. §1602(g). FOP Lodge 1 represents a bargaining unit of City of Wilmington Police Captains and Inspectors (as defined by DOL Case #79) and is certified as the exclusive bargaining representative of that unit. 19 Del.C. §1602(h).

The City of Wilmington and FOP Lodge 1 were parties to a collective bargaining agreement which had a term of July 1, 1998 through June 30, 2001. The parties are engaged in negotiations for a successor agreement.

On or about October 15, 2003, FOP Lodge 1 filed an unfair labor practice charge alleging the City violated 19 Del.C. §1607(a)(5) and/or (a)(6), which provide:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.
 - (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The Charge alleges that the parties' 1998-2001 collective bargaining agreement included a Performance Incentive Program ("PIP") as defined by Section 9.4 and Appendix B of that agreement. FOP Lodge 1 asserts that no PIP payments were made to Police Captains and Inspectors on either September 30, 2002 or September 30, 2003. By failing to maintain the status quo of a mandatory subject of bargaining, the FOP charges the City violated 19 Del.C. §1607(a)(5) and (a)(6).

The City filed its Answer to the Charge on or about October 20, 2003, in which it admits that the City did not pay any PIP payments beyond the June 30, 2001, expiration of the collective bargaining agreement and denies that it had an obligation to do so. Under New Matter, the City alleged FOP Lodge 1 also violated 19 Del.C. §1607(a)(5) and (a)(6) by demanding a continuation of PIP payments after the expiration of the agreement. The City asserts the Charge should be dismissed because the PIP issue should be resolved through the parties' negotiations for a successor agreement.

FOP Lodge 1 filed an Answer to the City's New Matter on or about October 29, 2003. It denies all of the City's alleged points of new matter.

This Probable Cause Determination is based upon a review of FOP Lodge 1's Charge, the City's Answer to the Charge and New Matter, and FOP Lodge 1's Answer to the City's New Matter.

DETERMINATION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

Construed in a light most favorable to the Charging Party, the pleadings constitute reason to believe that an unfair labor practice may have occurred. Specifically, the issue is whether the Performance Incentive Program constitutes a mandatory subject of bargaining and if so, whether the City violated 19 Del.C. §1607 (a)(5) and/or (a)(6) when it failed to continue the program after expiration of the collective bargaining agreement.

The pleadings raise both factual and legal questions. PERB shall conduct a hearing as soon as is reasonably possible in order to provide the opportunity for the parties to create a evidentiary record on which argument can be made and a decision rendered.

DATE: 1 December 2003

/s/Deborah L. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Del. Public Employment Relations Bd.